

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in The 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands)	WT Docket No. 04-356
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)	
Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands)	WT Docket No. 02-353
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 To: The Commission		

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits these Comments in response to a Notice of Proposed Rule Making issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.² Among other matters, the FCC invited input on the regulatory framework, the band plan and the licensing and operating rules for the spectrum in issue.

Introduction

In the *NPRM*, the Commission observed that “...most of the major mobile telephone carriers plan to make additional upgrades to their networks to enable customers to access more advanced data services.”³ That statement is equally true for the vast majority of small and rural wireless service providers that are members of RCA. Customers expect their carriers to provide advanced

¹ RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

² *Notice of Proposed Rule Making*, WT Docket Nos. 04-356 and 02-353, FCC 04-218, released September 24, 2004 (“*NPRM*”).

data services in addition to high quality voice services regardless of market or carrier size. RCA members provide outstanding service in small and rural markets and their customers expect no less of them than do the customers of large carriers when advanced data services are introduced. Many carriers need additional spectrum to keep up with customers' expectations.

RCA supports the Commission's efforts to make more spectrum available for commercial wireless services, including the 20 MHz that is the subject of this proceeding. The pairing of 1915 MHz with 1995-2000 MHz (the "H-block") is especially interesting in the near-term because of the proximity of this spectrum to other broadband Personal Communications Services ("PCS") allocations and prospects for availability of economical handsets that will operate in existing PCS bands as well as in the H-block.

Size of Geographic Area

For small and rural wireless carriers there is no issue more important in this proceeding than the size of geographic areas to be licensed. Areas too large in size discourage participation in auctions because small and rural carriers have neither the need for large geographic area licenses to augment current operations nor the capital to compete effectively against large companies for large area licenses.

For the H-block, RCA urges the Commission to provide for small geographic license areas, either Basic Trading Areas ("BTA")⁴ or Metropolitan Statistical Areas and Rural Service Areas ("MSA/RSA"). BTA areas have the advantage of matching the license areas for PCS C, D, E and F-block spectrum. MSA/RSA license areas would match the Commission's cellular licensing plan. If

³ *NPRM* at 4.

⁴ As indicated by fn. 53 of the *NPRM*, use of BTA market boundaries must be permitted by copyright licenses issued by Rand McNally & Company. It would be logical for the Commission to attempt to negotiate an expanded copyright licensing agreement to include definition of H-block license areas by BTAs.

license areas are larger, most small entities will not have a realistic chance, due to capital requirements, to compete with large companies for H-block licenses. And, to the extent that H-block licenses will supplement spectrum holdings of operating carriers, the ability to purchase spectrum for exactly or nearly exactly the area needed, and no more than needed, offers carriers the best and most economical option for introduction of advanced data services. For smaller carriers, the BTA or MSA/RSA areas provide the best match in size to their current license areas and provide an opportunity to supplement spectrum holdings. Larger license areas such Economic Areas (“EA”), Major Economic Areas (“MEA”) and Regional Economic Area Groupings (“REAG”), to name a few of the alternatives, do not match current PCS or cellular license areas and are too large in size to be efficient purchases by smaller carriers who desire to improve services in current markets.

Reliance on partitioning, disaggregation, or the availability of a spectrum lease as a means to gain access to spectrum is a risky and inefficient proposition for smaller carriers. None of these approaches is a close substitute for the ability to purchase directly from the Commission the particular license area needed. Large companies that have the ability to purchase large license areas have disproportionate bargaining power in establishing the terms for any partitioning, disaggregation or leasing. Rural area spectrum can be left unused by licensees of large areas who have the flexibility to meet FCC performance requirements without ever serving the rural areas. The unfortunate result is that such companies can dictate terms for partitioning, disaggregation or leasing, or simply decline to make the area and spectrum available on any terms to smaller companies. Typical conditions demanded as part of partitioning, disaggregation and leasing agreements include strict adherence to network operating policies of the large carriers and agreement

to allow roaming at rates that are not related to the smaller companies' build-out and operating costs. Small carriers have learned that to disagree is to do without. The problem is exacerbated every time the Commission offers spectrum according to large geographic areas.

RCA understands that there may be interest by other parties in larger geographic license areas than the BTA or MSA/RSA plan urged by RCA. If the Commission is inclined to license a part of the 20 MHz of newly available spectrum according to larger areas, it should be the J-block not the H-block. The J-block spectrum is less likely to be integrated into the non-adjacent PCS operations of wireless carriers. And yet, ideally, the Commission would license both the H-block and J-block according to BTA or MSA/RSA boundaries to better facilitate spectrum distribution to those who will make first and best use of it.

In the *NPRM* it is noted that two parties, including RCA, filed petitions for reconsideration seeking changes to the band plan for 90 MHz of Advanced Wireless Services ("AWS") at 1.7 GHz and 2.1 GHz.⁵ RCA's petition asked the FCC to license all of the 90 MHz according to MSA/RSA boundaries. In subsequently filed *ex parte* submissions,⁶ RCA modified its position and the following revised bandplan was proposed by RCA:

<u>Blocks</u>	<u>Pairings</u>	<u>MHz</u>	<u>Area</u>	<u>Licenses</u>
A	1710-1720 and 2110-2120	20	EA	176
B	1720-1730 and 2120-2130	20	REAG	12
C	1730-1735 and 2130-2135	10	REAG	12
D	1735-1745 and 2135-2145	20	REAG	12
E	1745-1755 and 2145-2155	20	MSA/RSA	734

The change in RCA's position reflects a better understanding of the Commission's interest in

⁵ See RCA's Petition for Reconsideration of the *Report and Order* in WT Docket No. 02-353, 18 FCC Rcd 25262 (2003).

⁶ See RCA's Notices of Oral Ex Parte Communications, WT Docket No. 02-353, submitted August 6 and July 29, 2004.

making spectrum available in a variety of geographic area sizes.⁷ An AWS band plan that includes a 20 MHz license for MSA/RSA markets would allow small and rural carriers to compete with large companies for a useful amount of AWS spectrum. At the same time, favorable action on RCA's request for a band plan change for the AWS spectrum does not diminish the need for BTA or MSA/RSA licenses for the H-block in the instant proceeding. The AWS spectrum is not adjacent to the PCS bands and will not be as useful in the near-term to augment PCS operations as will be the H-block spectrum. Viewed in perspective, when 130 MHz of spectrum is made available in two proceedings, it is not unreasonable for small and rural carriers to request that 40 MHz, comprised of 20 MHz of H-block and 20 MHz of AWS spectrum, be licensed according to market areas that allow companies of all sizes to compete effectively in the Commission's auctions. Smaller companies usually focus attention on small markets and rural areas, and band plans that give companies of all sizes direct access to spectrum in the auctions will promote competition and facilitate improved wireless services in all areas in the most efficient manner.

Regulatory Framework

The Commission proposes licensing both the H-block and the J-block under Part 27 of the rules. RCA suggests, at least with regard to the H-block, that Part 24 rules would be more suitable for so long as the other PCS license blocks are regulated under Part 24. As the Commission observed, the H-block is adjacent to other operating PCS systems.⁸ RCA expects that mobile equipment manufacturers will develop duplexers that will allow handsets with a single duplexer to

7 RCA's Petition for Reconsideration was opposed by the Cellular Telecommunications & Internet Association ("CTIA"). RCA later modified its position to request a single 20 MHz license in the AWS for MSA/RSA sized licenses, and CTIA supported that concept and joined with RCA in its oral *ex parte* presentations on the subject.

8 *NPRM* at 9.

operate across the full range of PCS blocks, from A through H.⁹ Whether a single duplexer or two duplexers are needed in the near-term will make little difference to carriers that desire to make use of the H-block to augment services provided over spectrum licenses they now hold for other PCS blocks.

As the NPRM indicates, in circumstances where the H-block would be used in conjunction with other PCS spectrum for similar services, regulation of the H-block under Part 24 would not require a handset or a base station to be certified under the Commission's equipment authorization procedures under both Parts 24 and 27 of the rules.¹⁰ Uniformity and consistency in the regulation of equipment and operations for similar services appear to be desirable goals in this instance.¹¹

Geographic Area Licensing

RCA supports the Commission's tentative conclusion to license the H-block and the J-block according to a geographic area licensing plan, rather than a station-defined site-by-site licensing approach. A geographic area licensing plan would conform to the PCS licensing plan and allow carriers in the same market to supplement spectrum holdings and also permit new entrants to compete head-to-head in the same area with operating licensees. RCA agrees that a geographic licensing plan would minimize regulatory burdens for operators in the bands.

9 In comments submitted August 19, 2004 by Agilent Technologies in ET Docket No. 00-258, it was indicated that an A-G duplexer is achievable with present technology, although an A-H duplexer is not yet achievable. (p. 11) RCA anticipates that manufacturers' continuing research and development will result in an A-H duplexer in the near term. In the meantime, two duplexers could be incorporated into handsets to provide users a full range of access to the A-H block PCS frequencies.

10 *NPRM* at 9.

11 The Commission asked commenting parties advocating a Part 24 regulatory framework for the H-block to note that the Commission has tentatively concluded to apply certain specific provisions of the Part 27 rules, specifically regulatory status – Section 27.10, foreign ownership – Section 27.12, renewal expectancy – Section 27.14, and partitioning and disaggregation – Section 27.15. RCA notes that PCS licensees are subject to similar requirements under Part 24 or Part 1 of the rules. Viewed in perspective, the regulatory framework of Part 27 or Part 24 is less of a concern to RCA than the size of geographic license areas, as discussed elsewhere in these Comments.

Conclusion

RCA requests that the Commission make available the H-block spectrum according to BTA or MSA/RSA geographic license areas so as to allow companies of all sizes to compete effectively in an auction for such licenses. Being adjacent to other PCS bands the H-block is uniquely positioned to be useful either for voice or data services according to public demand in the market. Ideally, the license areas for J-block spectrum would also be BTA or MSA/RSA in size, but if the Commission concludes that large license areas are appropriate for one block or the other, the larger geographic areas should be used for the J-block, not the H-block.

Respectfully submitted,

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[filed electronically]

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December 8, 2004